South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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MAJOR ISSUES FROM THE 2001 LEGISLATIVE SESSION

These summaries highlight some of the major bills considered by the General Assembly this year. Please note that many issues which are included in this document are addressed in more than one bill. We have highlighted bills that have made the most progress towards passage.

This document will be revised and expanded. Major legislation is summarized here in a format that is intended to be more accessible than a simple reading of the bills, joint resolutions, and acts. This report, which highlights legislative activity through *Friday, May 11, 2001*, is a guide to, not a substitute for, the full text of the legislation summarized.

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APPROPRIATIONS

THE 2001-02 GENERAL APPROPRIATION BILL (H.3687)

A major concern this year has been writing a state budget that meets the needs of the State while considering annualizations totaling hundreds of millions of dollars. An annualization occurs for a variety of reasons, including: the planned loss of revenue; funding recurring programs with non-recurring dollars; funding items partially in one fiscal year which will have to be funded for a full year in the following fiscal year; funding items required by the Constitution or by statute to be funded at a level computed by a set formula; funding expected increases in a program to maintain the service and growth; and funding capital items with multi-year funding requirements. It should be noted that there is sometimes a difference of opinion as to what constitutes an annualization. Whether or not an item is truly an annualization, and whether or not to fund an annualization, are determinations of the General Assembly.

As passed by the House, **H.3687** gives emphasis to funding for education, tax relief, and benefits for senior citizens. An important aspect of this year's House-passed budget bill is that it includes no Part II (permanent law) provisos.

OTHER SIGNIFICANT ITEMS IN THE HOUSE-PASSED BUDGET BILL INCLUDE:

- **EDUCATION**
  - A $105 million increase (net over last year) in K-12 education funding;
  - A 3.8% increase in teacher pay; average pay for South Carolina teachers is funded at $593 above the projected Southeastern average.
  - Teachers will receive $200 (tax free) for supplies;
  - A 2% increase in salary for school bus drivers;
  - Budget reductions of approximately 10.5% for most higher education institutions, exempting LIFE, Palmetto Fellows, Need-Based, and Southern Regional Education Board Scholarships from the reductions;
  - Authorization for agency heads at higher learning institutions to initiate employee furlough programs of not more than twenty working days in the fiscal year; furloughs must be inclusive of all employees, and during any such furlough, employees would be entitled to participate in the same state benefits as otherwise available to them except for receiving their salaries.

- **TAXATION**
  - Continues the initiative, begun last year, to phase out the sales tax collected on groceries by reducing the second penny in January 2002;
  - Provides a second Sales Tax Holiday (February 2002);

- **HEALTH CARE**

  - Provides $24 million for the Silver Card program, established last year to assist senior citizens in purchasing prescription drugs; the House-passed budget opens up the possibility that federal dollars may be used to substantially enhance the prescription drug assistance, creating a new, expanded program, Silver Card Plus. With a federal waiver, the House-passed plan could reduce the current program's deductible from $500 to $100 and could lower co-payments;
  - Establishes a study committee to study the senior prescription drug program;
  - Provides a total of $365 million for Medicaid funding; also requires the Department of Health and Human Services (DHHS) to conduct a study and report on ways to control growth of the Medicaid program and requires DHHS to identify where more federal funds may be recouped by the State;

- **STATE EMPLOYEES/STATEWIDE ISSUES**

  - Provides state employees a pay increase of 1.5% for cost of living, and a possible 1% merit increase;
  - *Establishes the Law Enforcement Officers' Retention Incentive Program (LEORI), which allows active members of the Law Enforcement Officers' Retirement System to retire for purposes of the system with the retirement benefit calculated on the basis of the member's average final compensation and service credit at the time the program period begins; the member would be allowed to continue employment for a specified program period up to five years; **(also see **H.3718** in this document).*

- **PUBLIC SAFETY**

  - Provides $3.2 million for a class of 50 troopers;

Funds were not available to write a Capital Reserve Fund bill for Fiscal Year 2001-02.

STATUS: **H.3687** *passed the House and was amended in the Senate Finance Committee. The full Senate begins debate on the bill on May 14.*

BOND BILL

The House approved **H.3688**, a bill authorizing the issuance of over $395 million in state bonds. Most of the funds authorized in the bill go to improvements at the state's public schools, colleges and universities. Some of the projects funded in the House-passed bill include:

- $30 million to the Department of Education for school buses, a portion of the $41.9 million total for public education;
- $226.2 million for construction, renovation, and maintenance projects at higher education institutions, including TEC schools;
- $33.6 million to the Department of Commerce for various local projects (this amount also includes $16 million for the Coordinating Council);
- $10 million for the State Farmers Market;
- $5.2 million to the State Ports Authority for dredging the Charleston harbor;
- $8 million for Charles Towne Landing State Park;
- $9.8 million to the Department of Corrections for general renovations and repair;
- $15.6 million to the Department of Juvenile Justice for female evaluation and commitment facilities, detention centers and infrastructure upgrade, central support facilities upgrades, and Northeast Center;
- $6.9 million for a SLED forensic laboratory.

STATUS: **H.3688** *was approved by the House and is pending consideration in the Senate Finance Committee.*

THE STATE BUDGET PROCESS

The House approved **H.3755**, which includes provisions amending and impacting the state budget process. The bill prohibits including in the Governor's recommended budget or in the annual general appropriations bill or in any bill or joint resolution making supplemental appropriations, a provision which: adds to the general and permanent law of the State; amends the general and permanent law of the State, not including amendments applying only for the duration of the fiscal year or for the life of the affected appropriation; repeals any part of the general and permanent law of the State. The bill provides that this prohibition does not apply to a provision imposing, amending, or repealing a tax.

The bill also establishes the Joint Zero-Base Budget and Agency Evaluation Selection Committee (the Joint Committee) consisting of ten appointed members of the General Assembly. The Joint Committee is charged to annually select state agencies for evaluation and zero-base budgeting during times the Committee establishes. An agency budget submitted while an agency is undergoing evaluation must be prepared in the form of a zero-base budget and reviewed accordingly.

The bill also creates within the Legislative Audit Council a government review division (the division) whose purpose is to evaluate state agency programs to determine whether these programs have outlived their usefulness or should be changed to address the needs of the state's citizens and the General Assembly. The bill provides items which the division may consider in this evaluation, and requires that the division hold a public hearing before making its review and evaluation, receiving testimony from the public, from certain personnel of the program of the agency under review, and from any other interested parties. Chairs of legislative standing committees which have jurisdiction over the agency whose program is under review shall sit with the division at these hearings, and the agency providing the program under review has the burden of demonstrating a public need for the program's continued existence. After the hearing, the division is required to report its findings to the presiding officers of the House and Senate, who will then refer the report to the appropriate standing committees.

The bill provides for development of a criteria format and procedure for establishing a termination schedule for the programs of the agencies which are not considered worthy of continuation. The bill includes provisions for terminating such a program and provides that terminated programs may be reinstated by the General Assembly for periods not to exceed five years, excluding the year of termination.

The bill provides that before August 2001, the Joint Committee shall select four agencies for zero-base budget submission, and these agencies must make their zero-base budget submission to the Office of State Budget before November, 2001. The Governor is not required under this bill to apply zero-base budget principles in his recommended 2002-03 fiscal year budget for these agencies. Also, the bill provides that these four agencies are not subject to the evaluation requirements of the bill.

The Joint Committee is required, before August, 2001, to select additional agencies subject to both the evaluation and zero-base budget requirements of the bill, and the agencies selected shall make their zero-base budget submission before October, 2002.

STATUS: **H.3755** *was approved by the House and is pending consideration in the Senate Finance Committee.*

BUSINESS

ALLIGATOR FARMING PILOT PROGRAM

The House and Senate passed **H.3821** and ordered the legislation enrolled for ratification. This joint resolution establishes a three-year pilot program of alligator farming for the purpose of determining the feasibility of raising alligators to consume the chickens and turkeys that die in poultry farming operations. The joint resolution provides that, until July 1, 2004, any person eighteen or older may

establish an alligator farm for the purpose of poultry mortality disposal by complying with the terms and conditions specified in the joint resolution. The legislation provides siting requirements and standards for fencing and containment that must be used.

STATUS: *Having passed both the House and Senate,* **H.3821** *was enrolled for ratification on April 19.*

BEER MANUFACTURERS, BREWERS, AND IMPORTERS

H.3479 is a bill pertaining to manufacturers, brewers, and importers of beer. Under this bill, any manufacturer, brewer, or importer of beer or its affiliate may hold an interest in a limited partnership providing financial assistance to a general partner wholesaler, but may only exercise that control of the limited partnership business as is permitted by this Uniform Limited Partnership Act. However, in no event may the limited partner, directly or indirectly, have any managerial control or decision-making authority including personnel decisions, with respect to the day-to-day operations of the limited partnership, and upon a default by the general partner wholesaler, the limited partner is not entitled, directly or indirectly, to any additional control, ownership, or financial interest in the general partner wholesaler, nor may the limited partner become the general partner in the limited partnership. No manufacturer, brewer, or importer of beer or its affiliate licensed in this State, directly or indirectly, may have any financial or ownership interest in the general partner wholesaler. It is further declared an unfair trade practice for any manufacturer, brewer, or importer of beer or its affiliate holding an interest in a limited partnership providing financial assistance to a general partner wholesaler pursuant to this legislation to have directly or indirectly any managerial control or decision-making authority, including personnel decisions, with respect to the day-to-day operations of the limited partnership.

The only financial assistance that may be provided under the provisions of this bill is the initial financial assistance to the limited partnership to acquire a licensed beer wholesaler. In this arrangement for financial assistance, the federal basic permit and the wholesaler's license issued by the department must be issued in the name of the general partner wholesaler on behalf of the limited partnership, and not in the name of the limited partnership nor in the name of the manufacturer, brewer, or importer or its affiliate.

The limited partnership may not exist for more than ten years from the date of its creation and may not be recreated, renewed, or extended beyond that date. The limited partnership shall not be considered as amending or otherwise altering Title 61 except for the limited purposes permitted in this section in connection with a manufacturer, brewer, or importer of beer or its affiliate who is licensed in this State providing the financial assistance. A manufacturer, brewer, or importer or its affiliate shall not mandate, directly or indirectly, that a wholesaler use the financial assistance as described in this section.

A violation of legislation is deemed to be a violation of the South Carolina Unfair Trade Practices Act.

STATUS: **H.3479** *received a favorable report from the Senate Judiciary Committee on May 2.*

MORTGAGE LOAN BROKERS

The House approved and sent to the Senate **H.3360**, a bill transferring administrative control of the state's mortgage loan brokers from the Department of Consumer Affairs to the Department of Labor, Licensing and Regulation (LLR). The bill establishes under LLR the South Carolina Board of Mortgage Loan Brokers, composed of four mortgage loan brokers (each of whom must have five years or more experience and hold a valid license), one realtor who is a real estate broker or real estate appraiser, one representative of a financial institution, and one member of the public. All members of the board are appointed by the Governor, and terms of service for board members are provided. The legislation provides for other revisions such as converting from an annual to a biennial schedule compliance with fee payment and continuing education requirements. The bill requires companies to be registered and brokers to be licensed, as opposed to the current system under which a company is licensed and the broker and employees are registered under the company. The bill provides that each mortgage loan brokerage office must employ a licensed broker. Current law only requires one broker per company, which might have offices in multiple locations. The legislation provides that if a person files a written complaint with the board or the director charging a broker with a violation, the director must examine the books, records, and other pertinent documents to determine if the broker has been in substantial compliance with the law. The bill also provides that the Director of LLR or his appointed designee within the department shall examine, on an unannounced basis, not less frequently than every two years the books, records, and other pertinent documents to determine if the broker has been in substantial compliance with the law.

STATUS: **H.3360** *passed the House on February 14 and was sent to the Senate where it was referred to the Labor, Commerce and Industry Committee.*

RESIDENTIAL PROPERTY DISCLOSURE STATEMENTS

The House of Representatives passed **H.3601** and sent the bill to the Senate where it was referred to the Judiciary Committee. This bill provides that the owner of residential real property shall furnish to a purchaser a written residential property statement, the form of which is to be established by the Real Estate Commission, disclosing those items that are relative to the condition of the property and of which the owner has actual knowledge. The disclosure form must include, but is not limited to, the following characteristics and conditions of the property: (1) the water

supply and sanitary sewage disposal system; (2) the roof, chimneys, floors, foundation, basement, and other structural components and modifications of these structural components; (3) the plumbing, electrical, heating, cooling, and other mechanical systems; (4) present infestation of wood-destroying insects or organisms or past infestation, the damage from which has not been repaired; (5) the zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from a governmental agency affecting this real property; (6) presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material, buried or covered, and other environmental contamination; (7) existence of a rental, rental management, or other lease contract in place on the property at the time of closing. The disclosure form would also afford the owner the option of indicating that he is making no representations as to any condition. The legislation imposes duties on owners and real estate licensees in regard to the requirements.

The legislation does not pertain to the first sale of a dwelling never inhabited. Disclosure statements are not required between parties when both parties agree in writing not to complete a residential property disclosure statement. The legislation specifies various other exemptions from the requirement such as court ordered transfers and inheritance of real property from a spouse.

STATUS: **H.3601** *passed the House on April 18 and was sent to the Senate where it was referred to the Judiciary Committee.*

RIGHT TO WORK LAWS

The House approved and sent to the Senate **H.3142**, a bill revising enforcement of South Carolina's right to work laws which prohibit practices that have the effect of making employment contingent upon whether or not an employee is affiliated with a labor union or organization. The bill broadens the investigatory powers of the Department of Labor, Licensing and Regulation (LLR) in disputes arising from alleged violations of the Right to Work laws. In the course of investigating claims, the Director of the Department of Labor, Licensing and Regulation is authorized to hold hearings and enter a workplace in order to evaluate compliance. The Director is authorized to assess a violator a civil penalty of not more than one hundred dollars for each offense. The bill makes several amendments to penalty provisions and broadens the scope of persons prohibited from participating in unlawful labor agreements that violate an employee's right to work by allowing for penalties and/or causes of action against any person for violations. Current law allows for such actions to be taken against employers, only. The legislation also creates a private cause of action under which a person who has been denied employment or deprived of continued employment through force, intimidation, obstruction, interference, or

through other means in violation of the State's Right to Work provisions is entitled to recover from the employer actual damages as well as punitive damages awarded at the discretion of the court or jury.

STATUS: **H.3142** *passed the House on February 15 and was sent to the Senate where it was referred to the Labor, Commerce and Industry Committee.*

UNAUTHORIZED CHANGE OF UTILITY PROVIDER

The House passed **H.3465** and sent the bill to the Senate. This bill prohibits the unauthorized change of a customer's utility provider, a practice commonly referred to as "slamming." The legislation provides that utilities (telephone, water, electric, etc.) whose customers can choose providers may not change a customer's utility provider without obtaining the customer's authorization according to the marketing or anti-slamming guidelines specified in the legislation. A utility that violates the provisions is liable to the customer for all charges incurred by the customer, in excess of those normally incurred through his designated provider, during the period of the unauthorized change. A utility that willfully or knowingly violates the provisions is subject to a fine of not less than two thousand dollars nor more than ten thousand dollars for each violation. The fines are assessed by and must remain with the Public Service Commission. The legislation exempts from liability utilities acting as third parties such as local telephone companies that only administer changes in providers, and do not initiate them.

STATUS: **H.3465** *passed the House on March 20 and was sent to the Senate where it was referred to the Judiciary Committee.*

VACATION RENTALS

The House passed **H.3560**, the "South Carolina Vacation Rental Act," and sent the bill to the Senate where it was referred to the Judiciary Committee. The Senate passed companion legislation, **S.232**, which was introduced in the House and referred to the Labor, Commerce and Industry Committee. This legislation establishes new guidelines for vacation rental transactions. The legislation applies to those renting or managing residential property for vacation rental. The legislation does not apply to lodging provided by hotels, motels, tourist camps, campgrounds, and rental timesharing accommodations. A vacation rental is the lease, sublease, or other rental of residential property for a period of fewer than ninety days, but it does not include rental of residential property on a weekly or monthly basis pursuant to the South Carolina Residential Landlord and Tenant Act. The legislation requires an owner or rental management company and tenant to use a written vacation rental agreement. The intentional failure of an owner or rental management company to use a written vacation rental agreement is an unfair trade practice. No vacation rental agreement is valid and enforceable unless the tenant

has accepted the agreement as evidenced by at least one of the following: (1) the tenant's signature on the vacation rental agreement; (2) the tenant's payment of any monies towards the vacation rental agreement; (3) the tenant's taking possession of the property subject to the vacation rental agreement. Under the legislation, an owner or rental management company in a vacation rental agreement shall place in a trust account any monies received from the tenant. The owner or rental management company may require the tenant to pay all or part of any required rent, security deposit, or other fees in advance of the tenancy. The terms of these advanced payments, which may be nonrefundable, must be stated in the vacation rental agreement.

The legislation establishes the rights of involved parties in instances where a property that has been rented under a vacation rental agreement is sold to a new owner. The new owner of a residential property subject to a vacation rental must honor existing vacation rental agreements for all vacation rental periods that begin no later than one hundred eighty days after the recorded date of sale or transfer of the residential property.

The legislation provides that if state or local authorities order a mandatory evacuation of an area that includes a residential property subject to a vacation rental, the tenant in possession of the property shall comply with the evacuation order.

STATUS: **H.3560** *passed the House, was introduced in the Senate, and referred to the Senate Judiciary Committee on April 26. The Senate passed the companion bill,* **S.232**, *which was introduced in the House and referred to the House Labor, Commerce and Industry Committee on May 1.*

THE COURTS/CRIMINAL JUSTICE

ANNOTATION OF THE SOUTH CAROLINA CODE OF LAWS

S.70 requires the Code Commissioner to annotate in the South Carolina Code of Laws all unpublished federal opinions decided in the district which have been sent to him by the chief federal district judge, if these opinions affect the interpretation or invalidations of South Carolina statutes.

STATUS: **S.70** *was enrolled for ratification on April 6.*

JUDICIAL VACANCIES

Current law requires only that the Judicial Merit Selection Commission notify the public about judicial vacancies. **H.3052** requires the Judicial Merit Selection Commission, in a timely fashion, to send a news release to each newspaper of daily

circulation in the state that contains the names of the candidates as well as the date, place, and time of judicial screening hearings. The news release must contain a statement about the importance of public input in the screening process. Under the bill, the Judicial Merit Selection Commission is required to (1) request of each newspaper that the news release be published on at least one-half of one newspaper page, and (2) send the news release to applicable bar organizations.

STATUS: **H.3052** *was introduced in the Senate on January 30, read for the first time, and referred to the Senate Judiciary Committee.*

NOMINATING PROCESS OF QUALIFIED JUDICIAL CANDIDATES

Current law requires a three-week waiting period between the date of the Judicial Merit Selection Commission's nominations to the General Assembly and the date the General Assembly conducts the election for these judgeships. **S.289** changes the three-week waiting period to a two-week waiting period.

STATUS: **S.289** *was enrolled for ratification on April 6.*

PREMARITAL AGREEMENTS

H.3756 provides that the family court has exclusive jurisdiction to hear and determine matters relating to the validity of premarital agreements and the effect of these agreements on issues otherwise within family court jurisdiction.

STATUS: **H.3756** *was introduced in the Senate on April 10, read for the first time, and referred to the Senate Judiciary Committee.*

SOUTH CAROLINA TRUTH IN SENTENCING ACT

The House of Representatives amended, approved and sent to the Senate **H.3141**, the "South Carolina Truth In Sentencing Act" on March 7, 2001. Under this legislation, a prisoner convicted of a crime and sentenced to the Department of Corrections is not eligible for early release, discharge, or community supervision until the prisoner has served 85% of the actual term of imprisonment imposed. This bill phases out parole, and offenders who commit their crimes after the effective date of this bill will not be eligible for parole release. Act 83 of 1995 provided Truth in Sentencing for only those offenses with maximum possible penalties of twenty years or more.

As passed by the House, **H.3141** extends the provisions of Truth in Sentencing to all crimes except: (1) those punishable by imprisonment in local correctional facilities for ninety days or less; (2) to a sentence imposed pursuant to the Youthful Offender Act, or (3) a sentence involving the Shock Incarceration Program. The bill

requires the Department of Corrections to make reasonable efforts to notify the victims, trial judge, solicitor, and sheriff of the county or the law enforcement agency of the jurisdiction where the offense occurred before releasing inmates on work release.

Under current law, if the court determines that a prisoner has wilfully violated a term or condition of the community supervision program, the court may impose any other terms or conditions considered appropriate and may continue the prisoner on community supervision, or the court may revoke the prisoner's community supervision and impose a sentence up to one year for violation of the community supervision program. Under **H.3141** as passed by the House, the court may not impose a period of incarceration exceeding the length of time remaining on the original sentence. The bill establishes a Criminal Justice Commission composed of nineteen members.

On April 25, 2001 **H.3141** received a majority favorable with amendment report as well a minority unfavorable report from the Senate Judiciary Committee. The Senate Judiciary Committee's proposed amendment included technical changes, such as the addition of commas and replacing the term "shall" with the term "must."

Under the Senate Judiciary Committee's proposed amendment to **H.3141**, a sentence for a term of incarceration less than twenty years imposed in general sessions court, or in magistrates court pursuant to §22-3-545, for a crime committed on or after the effective date of this provision, in the discretion of the sentencing judge, may include a requirement for completion of a community supervision program. This provision was in the bill as passed by the House; the Senate Judiciary Committee made the provision applicable to magistrates courts as well.

STATUS: *On April 25, 2001* **H.3141** *received a majority favorable with amendment report as well a minority unfavorable report from the Senate Judiciary Committee.*

TASK FORCE TO IMPROVE EFFICIENCY OF CIVIL CASES IN MAGISTRATES COURT

Act 418 of 2000 established a task force to study, make recommendations, and report to the General Assembly on the statutory and constitutional ramifications of various methods for improving and ensuring the speedy disposition of civil cases in circuit courts and magistrates courts. Act 418 required the task force submit its report to the General Assembly no later than January 18, 2001 and specified that the task force would be dissolved at that time. The task forced dissolved, but due

to scheduling conflicts the task force did not have an opportunity to meet. S.207 reestablishes the task force.

STATUS: The governor signed **S.207** *on March 27.*

ELECTIONS

CAMPAIGN FINANCE REFORM

On March 1, 2001 the House of Representatives amended **H.3144** and sent the bill to the Senate. The legislation amends the State Ethics Act, making several revisions that impact campaign finance and lobbying of the General Assembly:

- The legislation provides for new limitations on initiatives to influence the outcome of measures placed on the ballot to be voted on by the state's electors. Under this bill, the term "ballot measure committee" is defined as
  (a) an association, club, an organization, or a group of persons which, to influence the outcome of a ballot measure, receives contributions or makes expenditures in excess of $2,500 in the aggregate during an election cycle;

  (b) a person, other than an individual, who, to influence the outcome of a ballot measure makes contributions aggregating at least $50,000 during an election cycle to, or at least at the request of, a ballot measure committee; or

  (c) a person, other than an individual, who makes independent expenditures aggregating $2,500 or more during an election cycle.

- This bill requires a ballot measure committee, except an out-of-state committee, which receives or expends more than $2,500 in the aggregate during an election cycle to influence the outcome of a ballot measure to file a statement of organization. The statement of organization must be filed with the State Ethics Commission no later than five days after the ballot measure committee receives the contribution or makes the expenditure. Also, this bill requires an out-of-state ballot measure committee that expends more than $2,500 in the aggregate during an election cycle to influence the outcome of a ballot measure to file a statement of organization with the State Ethics Commission no later than five days after making the expenditure.

- H.3144 provides that a ballot measure committee may not use or permit the use of contributions solicited for or received by the ballot measure committee for any purpose other than the purpose for which the ballot measure committee was originally created, unless a person making the contribution gives written authorization for a different use other than for which it was originally intended. In cases of violations, the State Ethics Commission shall

have jurisdiction to seize all funds in a ballot measure committee's account and distribute them as provided.

- This bill prohibits a political party through its party committee or legislative caucus committee from giving a candidate contributions which total in the aggregate more than (1) $50,000 in the case of a candidate for a statewide office; and (2) $5,000 in the case of a candidate for any other office. The recipient of a contribution given in violation of this legislation may not keep the contribution and must, within 10 days, remit the contribution to the Children's Trust Fund.

- This bill eliminates the requirement that campaign reports must be sent to the State Election Commission; also, the bill eliminates the State Election Commission as the location for public availability of certified campaign reports. Additionally, this bill substitutes the State Ethics Commission for the State Election Commission as the agency responsible for determining errors or omissions on campaign reports.

- Notwithstanding any other reporting requirements, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which total in the aggregate more than $500. The term "anything of value" includes contributions which may be used for the payment of operation expenses of a political party, legislative caucus committee, or a party committee. The bill requires a political party to comply with other reporting requirements in the same manner as a candidate or committee.

- For purposes of determining who has to file disclosure reports, this bill expands the definition of the term "influence the outcome of an elective office" so as to include express words advocating the election or defeat of candidates [i.e. "vote for" "elect" "defeat."] The House approved an amendment that further expands the definition of "influence the outcome of an elective office" so as to also include communicating campaign slogans or individual words that, taken in context, have no other reasonable meaning other than to urge the election or defeat of a clearly identified candidate. This include slogans or wording similar to "Smith's the One," "Jones 2000," "Smith/Jones," "Jones!" or "Smith-A man for the People!"

- This bill extends the deadline in which lobbyists and lobbyist principals must report any lobbying activity not reflected on the October tenth report and not reported on a statement of termination from December thirty-first to January tenth of the succeeding year. Additionally, this bill extends the deadline for submission of each state agency or state department's lobbying during a particular filing period from the first of the month to the tenth of the month. Under the bill, the filing periods are from January first to March thirty-first for the April tenth report and from April first to September thirtieth for the October tenth report. The bill further provides that any lobbying activity not

reflected on the October tenth report and not on a statement of termination must not be reported any later than January tenth of the succeeding year.

- If required reports are not filed within five days of due date, current law provides that an individual (1) must pay a $100 penalty, and (2) must pay a fine of $10 for each calendar day in which the required statement is not filed. Additionally, current law provides that the $10 daily fine may not exceed $500; this bill eliminates the $500 cap on civil penalties for failure to file required reports.

- Also, this bill creates a new penalty for failure to file required reports or other reporting violations. Current law provides for a penalty of not less than $5,000, or imprisonment for not more than five years, or both. In addition to current law, **H.3144** adds a fine of up to 500% of the amount that should have been reported.

- The bill provides that invitations may be extended at national and regional conventions and conferences by lobbyist principals to all members of the General Assembly in attendance.
- This bill provides the House and Senate Ethics Committees with jurisdiction to impose penalties against legislative caucus committees that violate ethics laws.

- The bill also provides that if the Attorney General, after request by the State or any of its political subdivisions, refuses to defend an action brought in a court of competent jurisdiction challenging any provision of the Ethics, Government Accountability, and Campaign Reform Act, the Budget and Control Board, using funds appropriated to it, must defend the action brought against the State or its political subdivision.

H.3144 includes a severability clause which provides that, should some portions of the legislation be found unconstitutional, the remainder of the legislation would remain intact and in force.

STATUS: *On March 6, 2001* **H.3144** *was introduced in the Senate, read for the first time, and referred to the Senate Judiciary Committee.*

DISQUALIFICATION OF FELONS FROM VOTING

H.3159 revises the conditions determining when certain criminal offenders may vote. Currently, a person is disqualified from being registered or voting, if he/she is convicted of a felony or offenses against the election laws, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned. Under the bill as passed by the House, a person is disqualified from being registered or voting if he/she: (1) is convicted of a violent crime or offenses against the election laws, unless the disqualification has been removed by pardon, or (2) is convicted of any other felony unless the

disqualification has been removed by pardon or fifteen years or more have passed after the completion date of service of the sentence, including probation and parole time.

On April 25, 2001 the Senate Judiciary Committee gave **H.3159** a majority favorable with amendment report; there was also a minority unfavorable report for the bill. The Senate Judiciary Committee's proposed amendment is a **strike-all amendment**; therefore, the amendment would become the text of the bill. Under the Senate Judiciary Committee's proposed amendment, a person would be disqualified from voting if he/she:

(1) is convicted of murder as defined in §16-3-10, unless the disqualification has been removed by pardon;

(2) is convicted of a violent crime, as defined in §16-1-60, except murder, unless the disqualification has been removed by pardon or fifteen or more years has passed after the completion date of service of the sentence, including probation and parole time;

(3) is convicted of an offense against the election laws, unless the disqualification has been removed by pardon or fifteen years or more have passed after the completion date of service of the sentence, including probation and parole time; or

(4) is convicted of any other felony, unless the disqualification has been removed by service of sentence, including probation and parole time unless sooner pardoned.

STATUS: *On April 25, 2001* **H.3159** *received a favorable report with amendment from the Senate Judiciary Committee; there was also a minority unfavorable report for the bill.*

OMNIBUS ELECTION LAWS REVISIONS

H.3789 makes numerous election law revisions. Listed below are highlights of the legislation.

County Election Commissions

This bill provides that all members of boards of registration, county election commissions, and combined county boards of registration and county election commissions must be appointed for terms of two years. All terms begin on the date of appointment and end on March thirty-one of the year the term ends. The bill also provides that a member of a county board of registration, county election commission, or a combined county board of registration and county election

commission may be removed for cause by the Governor upon recommendation of the State Election Commission. The bill further provides that nothing in this legislation may be construed to prevent a legislative delegation from recommending to the Governor the removal of a board or commission member.

Failure by a member of a county registration board, a combined county election and registration commission, or a county election commission to complete or make satisfactory progress toward completion of the certification and training requirement as determined by the State Election Commission, constitutes neglect of duty for which the member must be removed from office by the governor. The bill also requires the State Election Commission to report to the governor and the legislative delegation or other recommending authority the progress of each of these officials toward completion of these training and certification requirements.

Uniform Election Procedure Act

Section 7-13-210 defines "governing body," as: the governing body of a municipality, school board, school district, special purpose district, or public service district, which include, but are not limited to, water, sewer, fire, recreation, soil conservation, and other similar district offices.

This Section also sets forth appropriate times for elections. Notwithstanding any other provision of law or special act providing for the election of the members of a governing body, beginning at the time of the general election of 2002 and every year thereafter as appropriate, members of a governing body must be elected in elections to be conducted at the same time as the general election or on the first Tuesday following the first Monday in November in an odd-numbered year as follows:

(1) If the term for which a current member of a governing body expires in an even-numbered year, that member's term is extended until his/her successor is elected and qualifies in the manner provided in this article at the general election.

(2) If the term for which a current member of a governing body expires in an odd-numbered year, that member's term is extended until his/her successor is elected and qualifies in the manner provided in this article on the first Tuesday following the first Monday in November.

Section 7-13-220 provides if an official is currently elected on the prescribed dates, the provisions of this bill now control the election of that official.

Section 7-13-230 provides elections that were non-partisan will continue as non-partisan.

Section 7-13-240 provides the terms for a member elected to a governing body are now provided by law for that governing body.

Section 7-13-250 provides candidates for non-partisan elections must be nominated by the method provided by law for the office affected, with the appropriate authority conducting the election.

Section 7-13-260 provides elections during odd-numbered years shall be conducted pursuant to the laws in place for conducting general elections.

Section 7-13-270 provides officials shall continue to be elected by district as prescribed for their governing body.

Section 7-13-280 states vacancies shall be filled as provided by law.

Section 7-13-290 provides results of elections must be determined in the manner provided by law for that governing body.

Section 7-13-300 provides that a referendum on the question of raising the bonded indebtedness limit of a governing body, including a county and any other referendum, must be held either at the time of the general election or on the first Tuesday following the first Monday in November of an odd-numbered year.

Hand Counts of Election Results

Hand counts of election results may only be conducted if (1) a machine malfunction is certified by the State Election Commission, and (2) the necessity of a hand count is certified by the State Election Commission. All hand counts will be conducted at the direction of the State Election Commission. Local election commissions will be required to follow the policies and procedures for hand counts established by the State Election Commission.

Frivolous Election Protests

If a protest is found to be frivolous, the candidate losing the protest shall pay all of the fees incurred by the winning candidate and by the State Election Commission.

Election Officials Assisting Nursing Home Residents

Before each election, the appropriate election official or a trained designee shall visit each nursing home or assisted living facility in the county and offer qualified residents the opportunity to apply for an absentee ballot. Assistance can be provided to the resident to allow them to apply. Any resident correctly applying shall be brought an absentee ballot by the above stated election official.

Methods of Absentee Ballots

If a machine can properly, under the law, perform the task it can be used as a means for absentee voting. The State Election Commission must develop guidelines for this process.

Special Elections to Fill Vacancies in Office

Current law provides that if the eighteenth Tuesday after the vacancy occurs is no more than sixty days prior to the general election, the special election shall be held on the same day as the general election. Under this bill, if the vacancy occurs no more than 15 days after the general election, the special election shall be held on the same day as the general election.

Poll Watchers

This bill allows poll watchers to be registered voters in the state rather than in the county where they are to watch.

Integrity of the Ballot

If more than one name for an office is marked on a ballot, the ballot must not be counted. The integrity of the ballot is the voter's responsibility and upon a hand count the voter's intent must be clear on the face of the ballot as prescribed by the State Election Commission.

Straight Party Ticket

The bill allows voters to vote a straight party ticket, including voting straight party for President and Vice-President.

Absentee Ballot

This bill replaces "by mail" with "in writing" as a means for a family member to request an absentee ballot. This bill adds language requiring any absentee application produced by a candidate or party to be approved and stored on file for public inspection by the State Election Commission. The bill specifies that if someone fraudulently signs a form requesting an absentee application that person shall be subject to the penalties prescribed for such an offense. Finally, "any voter" replaces "a person" as people subject to the penalties of violating this section.

Canvassing and Announcements of Results

This bill provides that as part of the canvassing and announcement of the results an election required by §7-13-1880, the entity charged by law with conducting the election must report the aggregate number of electors signing the poll list. This number must be included in the report of the entity charged by law with conducting the election to the State Election Commission.

Sixteen and Seventeen Year Old Poll Managers' Assistants

Current law provides that no polling place may employ more than one sixteen or seventeen year old poll managers' assistants; this bill deletes this provision. Under this bill, one sixteen or seventeen year old assistant poll manager may be appointed for every two regular poll workers appointed to work in the precinct.

Referendum on the Question of Raising the Millage Limit of a Governing Body

A referendum on the question of raising the millage limit of a governing body must be held either at the time of the general election or on the first Tuesday following the first Monday in November of an odd-numbered year.

STATUS: **H.3789** *was approved by the House and sent to the Senate on May 10.*

PUSH POLLING

H.3259 provides regulations for push-polling. Under the bill, a push-poll is defined as a paid telephone survey supporting or opposing any candidate for public office and conducted by or on behalf of a candidate or committee that (1) asks questions or gives statements relating to candidates for public office that state, imply, or convey information about another candidate's character, status, or political stance or record, and (2) is conducted in a manner that is likely to be construed by the person receiving the call to be a survey or poll which uses an established method of scientific sampling and gather statistical data for entities or organizations that are acting independently of any political party, candidate, or interest group.

The bill requires the person conducting the push poll at the beginning of the call to disclose the name of the candidate or committee that paid for, sponsored, donated, or authorized the call. If the call is an independent expenditure, the disclosure must also state that no candidate has approved the call. The bill prohibits a person or organization from stating or falsely implying fictitious names or telephone numbers when providing the required disclosures. The bill requires the entity in charge of conducting a push-poll to file (1) the name, telephone number, and address of the candidate or committee who paid for, sponsored, donated, or authorized the poll, and (2) the text of the poll with the State Ethics Commission and also with the

candidates or campaigns involved twenty-four hours before the poll is initiated. If a committee or entity has paid for, sponsored, donated, or authorized the poll, it must also file the names of the members of its governing board, board of directors, or executive committee.

A person who violates the provisions of this bill is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or be imprisoned not more than one year, or both.

STATUS: *On February 27,* **H.3259** *was introduced in the Senate, read for the first time, and referred to the Senate Judiciary Committee.*

ENVIRONMENT

HOG FARM MORATORIUM

This legislation provides for a moratorium on the construction or expansion of swine farms, swine houses, and on lagoons and animal waste management systems for swine farms, and on the issuance of any permit required for the construction or expansion of swine farms, swine houses, and on lagoons and animal management systems for swine farms and swine houses. Until and unless otherwise provided by law, it is unlawful for any person, state agency, county, county agency, municipality, or municipal agency to issue a permit for an animal waste management system for a new swine farm or the expansion of an existing swine farm. The construction or expansion of a swine farm or animal waste management system for a swine farm is unlawful and prohibited during the period of the moratorium regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under applicable law. The legislation provides that the moratorium does not apply to specified repairs and maintenance of existing facilities.

STATUS: *Companion bills were introduced in the House and Senate:* **H.4002** *was referred to the Agriculture, Natural Resources and Environmental Affairs Committee.* **S.626** *was placed on the Senate Calendar without reference.*

SOUTH CAROLINA CONSERVATION BANK

As passed by the Senate, **S.297** establishes the South Carolina Conservation Bank (the Bank) and the South Carolina Conservation Bank Trust Fund (the Fund), and provides for the Bank's governance by a 15 member board (the Board) representing specified organizations and interests. The bill authorizes the Bank to: award grants or make loans to eligible recipients for purchases of land which advance the conservation and preservation purposes of the bill and which meet the criteria of the

bill; apply for and receive funding from federal, private, and other sources, including charitable and certain other contributions, to be used as provided in the bill; use its discretion in determining what portion of the Fund will be expended, awarded, or loaned in any particular year, and what portion should remain in the Fund from one fiscal year to the next. The bill provides that the Bank shall develop and prescribe appropriate guidelines and procedures to implement the provisions of the bill. The Bank is required to report annually to the Governor, the Lieutenant Governor, and the General Assembly, an account of trust fund receipts and dispersals, land acquisitions, and applications submitted to the Bank, with details on approved grants and loans (and their recipients) and the subsequent public benefit.

In order to operate the Bank, the Board is authorized to hire an executive director and staff, to contract for services, and to enter into cooperative agreements with other state agencies. Operating expenses of the Bank would be paid from the Fund, which would be created in the State Treasury separate from all other funds, and which would be authorized to receive revenues from any source the General Assembly may provide by law and from governmental grants and private gifts and bequests.

The bill provides procedures and criteria relevant to applicants and to the Board in applying for and awarding grants and loans, and the bill provides that the Board may only authorize grants or loans to purchase interest in lands at or below fair market value. The bill includes requirements which must be met before a recipient may sell, transfer, extinguish, assign, alienate, or convert any interest in land acquired through Bank funds, and the bill requires that interests in lands acquired with trust funds must be managed and maintained to perpetuate the values for which they were originally acquired. The bill requires that loans made from the Fund must be secured by mortgages on the subject property and the bill includes provisions that apply in the event of foreclosure.

The bill includes provisions that apply when Bank funds are used to purchase conservation easements and requires the Board, before it disburses Bank funds for such purchases, to assure that the terms and conditions of such easements are consistent with the purposes of the bill.

The bill authorizes the Department of Public Safety (DPS) to approve and issue special "Conserve South Carolina" motor vehicle license plates based on the Bank's recommendation for a seal, logo, or other symbol of the Bank. The fee for this special plate would be initially forty-eight dollars for every two years, in addition to the regular motor vehicle registration fee. The bill authorizes the Bank to alter the fee no more frequently than once every two years, and requires that the Bank notify DPS of any such fee changes. These special fees would be credited to the Fund.

The bill provides for termination of the Bank, and the provisions of the bill are repealed effective July 1, 2015, or ten years after the full funding of the trust fund, whichever is greater, unless reenacted by the General Assembly.

STATUS: **S.297** *passed the Senate on April 4 and was sent to the House,*

where it was referred to the Ways and Means Committee. The House Ways and Means Committee gave the bill a report of favorable with amendment. The bill is pending second reading on the House contested calendar.

HEALTH/SOCIAL SERVICES

ADOPTIONS PROCEDURE STUDY COMMITTEE

H.3302 is a joint resolution creating an Adoptions Procedure Study Committee. The purpose of this committee is to review the South Carolina adoption process and procedures for the purpose of strengthening the integrity of adoptions. The committee's review shall include, but is not limited to, what effect a voluntary relinquishment of parental rights should have on a parent's duty to pay child support before the adoption is finalized and in whose custody is a child whose parents' voluntary relinquishment of parental rights was obtained by a private attorney. The committee's review shall further include, but is not limited to, issues concerning the necessity of a putative father registry and problems relating to adoption subsidies, parental consent requirements, relinquishment of parental rights issues, licensing of persons facilitating adoptions, providing adequate notice of hearings to foster parents regarding their foster child and providing them with an opportunity to address the court, and the length of time required for foster parents to complete an adoption. The committee must submit its report by January 1, 2002, and at that time the committee would be abolished.

STATUS: **H.3302** *was enrolled for ratification on May 9.*

OPTOMETRISTS

The House approved and sent to the Senate **H.3290**, a bill revising the practice of optometry. The legislation modifies the current statutory limitation of the types of drugs an optometrist may use to diagnose and treat eye disease. Existing law allows optometrists to use topical drugs and four categories of oral drugs (antihistamines, antimicrobial, antiglaucoma, and analgesics) to treat eye disease. The legislation allows an optometrist to use any oral medication (except for Schedule I and II controlled substances) rational for the treatment of eye disease. The legislation specifically limits the use of these drugs so that, when used by an optometrist, they only can be used to treat eye disease. The legislation places additional conditions on an optometrist's use of oral steroids. When prescribing an oral steroid, an optometrist must consult with a physician prior to the prescription and notify the patient of the physician's recommendation. An optometrist may not consult with a physician without the prior consent of the patient. When an optometrist prescribes an oral steroid, a written report of this treatment must be made to the patient's primary care physician or to another physician or medical clinic designated by the patient. The legislation would allow an optometrist to use

an epinephrine auto-injector (Epi-Pen) in an emergency to start treatment for anaphylaxis (allergic shock) if the patient's symptoms and medical history do not preclude its use. After an Epi-pen is used by an optometrist, the patient must immediately by triaged to an appropriate medical facility. The legislation also eliminates several provisions that require optometrists to consult with and/or refer patients to physicians.

STATUS: **H.3290** *passed the House on March 29 and was sent to the Senate where it was referred to the Medical Affairs Committee.*

SOCIAL WORKERS

The House approved and sent to the Senate **H.3447**, a bill revising the licensure and regulation of social workers. This bill rewrites the practice act for social workers to make it conform to the uniform administrative framework established for boards and commissions administered by the Department of Labor, Licensure and Regulation (LLR). The bill also makes numerous substantive changes. The legislation creates new definitions for the different levels of social work practice and revises requirements for licensure at each level. The bill provides for a process under which currently licensed social workers are converted to the new licensure classifications created by the legislation. The bill revises the composition of the Board of Social Work Examiners (BSWE) to provide representation of new social work licensure classifications created in the legislation. The legislation adds requirements for client confidentiality and exceptions for legal obligations to report abuse or neglect of a child or vulnerable adult, defense of the licensee in a court proceeding, other court proceedings and where a client presents a danger to himself or others. The legislation also adds an exemption from licensure for government employees who perform social work services as long as they are performed within the course of their employment and the employees do not hold themselves out to be social workers.

STATUS: **H.3447** *passed the House on April 26 and was sent to the Senate where it was referred to the Labor, Commerce and Industry Committee.*

INSURANCE

AUTOMOBILE INSURANCE RECOUPMENT CHARGES

The House approved and sent to the Senate **H.3880**, a bill that furthers and clarifies the comprehensive automobile insurance reform provided under Act 154 of 1997. The legislation restates and confirms the original intent that "clean" drivers who have do not have insurance merit rating points will no longer pay recoupment charges. The legislation clarifies the criteria for the imposition of a surcharge for recoupment of losses remaining in the South Carolina Reinsurance Facility on March

1, 2002, or any losses accruing thereafter. Beginning on March 1, 2002 and continuing thereafter, a premium surcharge on liability premiums will be imposed under a plan promulgated by the Director of the Department of Insurance using driving records as of March 1, 1999. However, any insured or policyholder without insurance merit rating points on March 1, 1999, pursuant to the Uniform Merit Rating Plan in effect on March 1, 1999, would be exempt from a surcharge.

STATUS: **H.3880** *passed the House on April 27 and was sent to the Senate where it received second reading with notice of general amendments on May 14.*

CAPTIVE REINSURANCE COMPANIES

The House of Representatives passed **H.3665**, a bill providing for captive reinsurance companies, and sent the bill to the Senate where it was referred to the Banking and Insurance Committee. The legislation expands provisions authorizing captive insurance companies, which insure only the risks of parent or affiliated companies, so as to provide for a new form of captive, the reinsurance captive. The legislation provides requirements for such captives including minimum capitalization and the percentage of capital that must be kept in South Carolina.

STATUS: **H.3665** *passed the House on April 11 and was sent to the Senate where it was referred to the Banking and Insurance Committee.*

LOTTERY

The Senate approved and sent to the House **S.496**, the "South Carolina Education Lottery Act." The House significantly amended **S.496** and returned it to the Senate. On May 9, the Senate amended **S.496** back to the Senate-passed version and returned the bill to the House.

The House approved **H.3307**, also entitled the "South Carolina Education Lottery Act," and sent it to the Senate. On May 9, the Senate gave **H.3307** first reading and put it on the Senate calendar (without reference) for second reading.

As passed by the House, **S.496** and **H.3307** are similar but not identical bills.

The following are highlights of the House- and Senate-passed lottery plans:

THE SENATE-PASSED LOTTERY PLAN (S.496)

- Creates the South Carolina Lottery Corporation (the Corporation). The Corporation and its employees are subject to the South Carolina Consolidated Procurement Code, South Carolina Administrative Procedures

Act (APA), South Carolina Ethics Reform Act, and South Carolina Freedom of Information Act.

- Beginning in December 2004 and every three years after that, the Legislative Audit Council must conduct a management performance audit of the Corporation.

- The Corporation has the authority to adopt temporary regulations to implement the provisions of this legislation. These temporary regulations are not considered regulations as defined by the APA; however, these temporary regulations have the force and effect of law. The only lottery games that may be played pursuant to these temporary regulations are instant tickets and on-line lottery games. A multistate lottery game must not be played under these temporary regulations and may be implemented only when regulations have been promulgated and take effect pursuant to the APA.

- The Corporation is governed by a board composed of nine members to be appointed as follows, with mandatory inclusion from each of the state's congressional districts: (1) five members appointed by the Governor with the advice and consent of the Senate, one of whom must be designated by the Governor as an at-large member who shall serve as chairman of the board; of the remaining four members, none shall reside in the same congressional district as the others; (2) two members appointed by the President *Pro Tempore* of the Senate, neither of whom may reside in the same congressional district as the other; and (3) two members appointed by the Speaker of the House of Representatives, neither of whom may reside in the same congressional district as the other.

- Advertising expenditures may not exceed $7.5 million during the initial year of the lottery; second year expenditures may not exceed 1.5% of previous year's gross sales; for subsequent years, advertising expenditures may not exceed 1% of previous year's gross proceeds. No advertising contract may have a commission exceeding 3% of the contract amount. Transit advertisements of lottery games or the sale of lottery tickets by the Lottery Corporation or a lottery vendor are prohibited, whether done directly or indirectly. This prohibition does not apply to lottery retailers.

- The Governor must appoint a Lottery Retailer Advisory Board, composed of ten lottery retailers who will advise the Board on retail aspects of the lottery and who will present the concerns of lottery retailers.

- The Senate-passed bill states that it is the intent of the General Assembly that the Corporation encourage participation by minority businesses. The Corporation is required to undertake training programs to enable minority businesses to compete for contracts on an equal basis.

- Lottery game tickets or shares may not be sold to persons under eighteen years of age, but a person eighteen years of age or older may purchase

lawfully lottery game tickets or shares and make a gift to a person of any age.

- No lottery tickets or shares may be sold on the date of any general or primary election.

- During the first year in which the lottery is operational, one million dollars from net proceeds must be remitted to the **"Problem and Compulsive Gambling Fund."** During succeeding years, $1.25 million of unclaimed prize money will be credited to this separate fund.

- **Unclaimed prize money** in excess of the amount to effectuate the purposes of the bill related to education, treatment, and prevention of compulsive gambling disorders, not to exceed ten million dollars annually, must be credited to the South Carolina Department of Education for the **purchase of school buses** for public education.

- An individual who knowingly sells a lottery game ticket or share to a person under eighteen years of age or permits a person under eighteen years of age to play a lottery game is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than two hundred dollars or be imprisoned not less than thirty days nor more than sixty days, or both, in the discretion of the court. It is an affirmative defense to a charge of a violation of this section that the retailer reasonably and in good faith relied upon representation of proof of age in making the sale.

- A person under eighteen years of age who knowingly purchases a lottery game ticket is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars and not more than one hundred dollars.

- A school district board of trustees may not authorize or order the expulsion, suspension, or transfer of any pupil under the age of eighteen years who has been found guilty of a misdemeanor for knowingly purchasing a lottery game ticket.

- The corporation must operate as a self-sustaining, self-funded enterprise fund. Monies in the state general fund may not be used or obligated to pay the expenses of the corporation or prizes of the lottery, and a claim for the payment of an expense of the lottery or prizes of the lottery must not be made against any monies other than monies credited to the corporation operating account.

- The South Carolina Education Lottery Oversight Committee is created, to be composed of twelve members. The Oversight Committee must periodically, but at least annually, inquire into and review the operations of the Corporation and review and evaluate the success with which the authority is accomplishing its statutory duties and functions. The Oversight Committee

must also hold an annual public hearing and may conduct an independent audit or investigation of the authority as necessary.

- The Corporation must pay its operating expenses from lottery proceeds. For the second and succeeding years of operation of the lottery, the Corporation also must pay operating expenses to the Commission on Higher Education and the Board for Technical and Comprehensive Education for the actual costs of activities related to implementation of activities and programs established by the bill.

- For each lottery game, the Corporation must establish a prize structure that is based upon sound actuarial principles and does not rely upon proceeds generated from future or other lottery games. The Corporation may establish a lottery reserve fund to further accomplish this purpose.

- The Comptroller General must establish a restricted **Education Lottery Account** that must not be commingled with any other funds. On or before the twentieth day of each month, the Corporation must transfer to the Education Lottery Account, the amount of all net lottery proceeds during the preceding month.

- The **FIRST ONE HUNDRED MILLION DOLLARS** in the Education Lottery Account must be appropriated as follows:

    (1) **Fifty percent to the Commission on Higher Education** for free tuition at state technical colleges and two-year public institutions. Lottery tuition assistance at independent two-year institutions must be the same as the maximum in-state tuition rate at a two-year public institution;

    (2) **Thirty-eight percent for the SC HOPE Scholarship Program**; however, from these funds, the University of South Carolina-Aiken and the University of South Carolina-Spartanburg must be reimbursed the total cost of tuition for those students enrolled in the associate degree nursing program; this amount is in lieu of HOPE scholarships for those eligible students;

    (3) **Nine percent to the Department of Education** to be allocated as follows:
        (a) **Eighty-nine percent to K-12 school technology**; and
        (b) **Eleven percent to school-based grants** for pilot programs, to include programs providing deregulation as requested by school districts with an overall absolute or improved designation of average or better, with first priority given to schools reported as average, below average, or unsatisfactory in accordance with the Education Accountability Act;

    (4) **One percent to the State Library** for public library state aid;

(5) **Two percent to the Department of Education to fund homework centers:** these funds must be allocated to the local school districts based on a per pupil basis and may be used for salaries for certified teachers and for transportation costs, provided that priority in the distribution of funds must be given to schools designated as below average or unsatisfactory in accordance with the Education Accountability Act.

- The **REMAINING PROCEEDS** in the Lottery Education Account are appropriated as follows:

(1) **Thirty percent to the Commission on Higher Education for state technical colleges and two-year public institutions for an "institutional impact fee"** to mitigate the impact of increased enrollment at these colleges and institutions as a result of the provision of free tuition;

(2) **Forty percent to the Commission on Higher Education for higher education assistance**, including twenty percent for need-based grants, eight percent for tuition grants, eight percent for grants to teachers for advanced education with priority to annual grants earmarked for teachers working toward their masters' degree or advanced education in their areas of certification, or both, and four percent for the National Guard Tuition Repayment Program; a portion of the needs-based grants generated by the South Carolina Education Lottery must be designated to help off-set the cost of attendance of Pell Grant recipients at two-year public institutions; funding shall not be allocated to institutions to cover the cost of tuition for a student to the extent that a student's tuition is paid by other grants, scholarships, or other financial aid. A student must not receive reduced financial aid as a result of the implementation of this section;

(3)**Twenty-seven percent to the Department of Education** to be allocated as follows:

(a) **Twelve percent to K-12 school technology;**
(b) **Twenty-two percent to school-based grants for pilot programs**, with first priority given to schools reported as average, below average, or unsatisfactory in accordance with the Education Accountability Act;
(c) **Twenty-two percent to the Governor's Reading Initiative;**
(d) **Twenty-two percent to the Department of Education to fund homework centers.** These funds must be allocated to the local school districts based on a per pupil basis and may be used for salaries for certified teachers and for transportation costs, provided that priority in the distribution of funds must be given to schools designated as below average or unsatisfactory in accordance with the Education Accountability Act; and

(e) **Eleven percent to assist with the establishment of new magnet schools** with any carryover at the end of the fiscal year to be used at the discretion of the State Department of Education; and
(f) **Eleven percent to assist with the establishment of new charter schools** with any carryover at the end of the fiscal year to be used at the discretion of the State Department of Education;

(4) **Three percent to the State Library for public library state aid.**

THE HOUSE-PASSED LOTTERY PLAN

Highlights of provisions included in the House-passed version of **H.3307** or **S.496**, or both, are as follows:

- Creates the **South Carolina Lottery Commission** (the Commission). The Commission and its employees are subject to the South Carolina Consolidated Procurement Code, South Carolina Administrative Procedures Act, South Carolina Ethics Reform Act, and South Carolina Freedom of Information Act.

- Beginning in 2004 and every three years after that, the Legislative Audit Council must conduct a management **performance audit** of the Commission.

- The Commission is governed by a **nine member board** (the Board) – three members appointed by the Governor, three appointed by the President *Pro Tempore* of the Senate, and three appointed by the Speaker of the House of Representatives. All appointments are contingent upon a screening process/criteria delineated in the bill.

- **Advertising expenditures** may not exceed one-half of one percent of gross lottery revenues. Advertising contracts are limited to one year in duration. Advertising restrictions include, but are not limited to: must not suggest that the lottery player is contributing money for the good of the State; must not include any advertising outside of the lottery retailer's business premises; must not include advertising in connection with or at the site of a public school or an institution of higher learning or sponsorship of an activity at a public school or institution of higher learning.

- The Commission shall have tickets available for purchase by the public no later than **November 1, 2001**, or as soon as practicable.

- The Board **may promulgate regulations** in accordance with the APA. The Commission may promulgate **"temporary regulations"** which have the force and effect of law. However, the only lottery games which may be played pursuant to temporary regulations, policies, and procedures are **instant tickets and dollar tickets**. The Commission shall submit regulations to the

General Assembly for review in accordance with the APA at the January 15, 2002, legislative session. Temporary regulations authorized in the bill are repealed on July 15, 2004, or on the effective date of regulations submitted pursuant to the APA, whichever date occurs first. Under specified circumstances, the Board may promulgate temporary regulations as emergency regulations.

- The Board appoints and provides for the compensation of an **executive director** who, serving at the pleasure of the Board, directs the day-to-day operations of the Commission.

- The Board hires and provides for compensation of an **internal auditor** and necessary staff who are employees of the Commission. The internal auditor reports directly to the Board.

- The Governor shall appoint a **Lottery Retailer Advisory Board**, composed of ten lottery retailers who will advise the Board on retail aspects of the lottery and who will present concerns of lottery retailers.

- The Commission shall provide training programs and educational activities to enable **small and minority businesses** to compete for contracts on an equal basis.

- Lottery tickets **may not be sold to persons under eighteen years of age**, but a person eighteen years of age or older may purchase lawfully lottery game tickets or shares and make a gift to a person of any age.

- A lottery ticket or share **may not be sold on the date of any general elections** or **on any Sunday**; **within three hundred feet of a church, school or playground**; at a **location that serves alcohol for on-premises consumption**; or **on the campus of a public institution of higher learning**.

- A portion of **unclaimed prize money**, in an amount to be determined by the General Assembly, must be allocated to the State Department of Education for **the purchase of new school buses** and to the Department of Alcohol and Other Drug Abuse Services for **the treatment of compulsive gambling disorder** and educational programs related to that disorder.

- **A person who knowingly sells a lottery ticket or share to a person under eighteen years of age** or permits a person under eighteen years of age to play a lottery game is **guilty of a misdemeanor** and, upon conviction, must be fined at least $100 but not more than $500 or be imprisoned for not less than thirty days nor more than sixty days, or both.

- **A person under eighteen years of age who knowingly purchases a lottery ticket** is guilty of a misdemeanor and, upon conviction, must perform twenty hours of community service or must be fined at least one hundred dollars but not more than five hundred dollars. A district board of trustees shall not

authorize or order the expulsion, suspension, or transfer of any pupil for this violation.

- **Lottery tickets sales are subject to State sales tax.**

- The **Education Lottery Account** is established as a separate account for the net proceeds received from the State lottery. Funds from this account shall be appropriated by the General Assembly to programs and purposes stipulated in the bill.

    - Annual **administrative expenses may not exceed 15%** of gross lottery revenues for the year.
    - As near as practical, **at least 45%** of the amount of money from the actual sale of lottery tickets or shares must be made available **as prize money**.
    - Funds made available from the Education Lottery Account may not exceed the previous year's net proceeds. **At least 45% of the proceeds in any year shall be used for higher education purposes** and **at least 45% must be used for K-12 education purposes.**
    - The higher education portion shall be used to provide **Palmetto Fellows Scholarships** to all eligible applicants and then used to provide **LIFE Scholarships.**
    - The K-12 portion shall be split into two parts with the first part used to provide **youth education scholarships** of up to $1,000 to parents of a four year old who attends a public or private, for profit or nonprofit kindergarten, preschool, or child development center program provided in this State. Remaining K-12 funds shall be allocated equally between providing **public school facility support** and the **maintenance and acquisition of school buses.** Upon fully funding these items, remaining revenues shall be used for elementary and secondary public education as determined pursuant to the **Education Accountability Act of 1998**; future education improvement legislation; and **new programs** enacted by the General Assembly for public institutions of higher learning and state technical schools.
    - Beginning with school year 2002-2003, the annual amount of a **LIFE Scholarship for eligible students attending a four-year or two-year public institution or technical college** is increased to the cost of tuition for thirty credit hours a year or its equivalent plus a $300 a year book allowance. The annual amount of a **LIFE Scholarship for eligible students attending a four-year independent institution** must be the cost of attendance up to a maximum of the average annual cost of tuition at the state's four-year public institutions in the corresponding year. The annual amount of a **LIFE Scholarship for eligible students attending a two-year independent institution** must increase to the cost of attendance up to a maximum of the cost of tuition at a two-year regional public institution, both for thirty credit hours a year or its equivalent.

- Beginning with school year 2002-2003, **an entering freshman to be eligible for a LIFE Scholarship** in addition to the other requirements of the bill shall meet two of the following three criteria: have the grade point average required for the scholarship; have the Scholastic Aptitude Test (SAT) or equivalent ACT score required for the scholarship; be in the top 30% of his high school graduating class.
- Beginning with school year 2002-2003, students attending a **South Carolina technical school** taking at least eighteen credit hours of instruction a year but not more than thirty credit hours a year who are otherwise eligible for a LIFE Scholarship shall receive a LIFE Scholarship equal to one-half the amount that eligible students receive at the technical college who take at least thirty credit hours of instruction a year.
- Up to **one percent** of net proceeds would go to the **South Carolina State Library** for public library state aid, to be used for educational technology delivery, upgrade, and maintenance. A public library offering public internet access must use an **internet filtering or screening program** to receive this funding;

- The General Assembly shall **evaluate and review** at least biannually, the operation of the lottery and the success and efficiency of its operation. After review and evaluation, **the General Assembly may:** transfer all or part of the functions of the Commission to another agency; consolidate or combine the functions of the Commission with another agency; redirect or abolish (in whole or in part) any mission of the Commission; abolish all or any part of the functions of the Commission.

- A **statewide advisory referendum** shall be held in November 2004 to determine whether or not the voters want to continue a State lottery.

STATUS: *The House and the Senate have approved differing versions of **S.496**. On May 9, the Senate amended the bill back to the Senate-passed version and returned the bill to the House, where the question of House concurrence on the bill as amended by the Senate is pending on the House calendar.*

*The House approved **H.3307**, also entitled the "South Carolina Education Lottery Act," and sent it to the Senate. On May 9, the Senate gave **H.3307** first reading and put it on the Senate calendar (without reference) for second reading.*

REDISTRICTING

One of the most important and consuming issues facing the South Carolina General Assembly during the 2001 session, and probably for the next 8-10 years, is redistricting. Redistricting is drawing new boundaries for election districts. The

South Carolina General Assembly is responsible for drawing new boundaries for the six geographic areas from which South Carolina's representatives in the US Congress are elected and for drawing the boundaries of the election districts from which members of the SC House and SC Senate are chosen. Redistricting of local government election districts is usually the responsibility of local governments.

The decennial US census is the event triggering redistricting. The US Secretary of Commerce is required to report census results to the states by not later than April 1, 2001. These reports provide population data for the entire state and various levels of geography within the state. South Carolina actually received its census results about a week before the April 1 deadline. According to census data, as of April 1, 2000 there were 4,012,012 million individuals in South Carolina. On April 1, 1990 there were 3,486, 310 individuals in South Carolina. The difference between the two census reports is 525,702, which represents a 15.1 percent change.

New election districts are usually created using existing district boundaries as a starting point. Geographical units and their population are then moved into and out of existing districts to create new districts. Because of the magnitude and complexity of the task, dedicated computers and specially designed software are used.

The judiciary committees of the SC House and SC Senate will consider redistricting plans for the US and SC House and the SC Senate and recommend plans for adoption by their respective chambers. Like all other legislation, the plans will be expressed as bills and the committees' recommendations as committee reports. Also, like other bills, members of the legislature may offer amendments in committee and on the floor. The plans must receive three readings in each legislative chamber and will become law with the Governor's signature, the passage of five days, or an override of the Governor's veto.

Unlike most other legislation, before a redistricting plan may be implemented, South Carolina must obtain approval of the plan from either the federal District Court of the District of Columbia or the US Department of Justice. This approval is called "pre-clearance" and is required by section 5 of the federal Voting Rights Act.

When SC received its census data, only about 30 legislative days were left in the 2001 regular session. Consequently, efforts to draw new boundaries will continue beyond the regular session, so that proposed plans may be adopted and pre-cleared by the Justice Department before filing opens for US and SC House seats in mid-March 2002.

For a state to successfully draw new election district boundaries, it must satisfy a number of legal requirements. One of the basic requirements is that districts have equal or nearly equal population. This requirement, styled as the "one person, one vote" requirement, is based in guarantees of the Fourteenth Amendment (Equal Protection Clause) and Article I, Section 2 (Congressional Districts) of the US Constitution. The degree to which districts' population must be equal differs for

congressional districts and state legislative districts. The population of congressional districts in the same state must be as nearly equal as practicable. Strict or absolute equality (0% difference) is the objective.

For state legislative districts, the objective is "substantial equality" of population among districts. Whenever the population deviation between the most populous and least populous legislative districts is more than 10%, a prima facie case of discrimination is created, and the state has opened itself to litigation in which it must prove a rational state policy justification for the deviation. By contrast, a plan with less than a 10% deviation is prima facie Constitutional and challengers of the plan must make some other showing to defeat it.

Plans must also "navigate the narrow channels and shoals" between the federal Voting Rights Act's prohibitions on minority vote dilution and retrogression and the Equal Protection Clause's proscription on predominantly race-based redistricting. One writer has described this task as "squeez(ing) between the floor that has been erected by the VRA (Voting Rights Act) and the ceiling of allowable race consciousness under the Fourteenth Amendment". The requirements of the Voting Rights Act and the tension between those requirements and the Equal Protection Clause are explained below.

Section 5 of the Voting Rights Act prohibits redistricting plans that lead to a "retrogression" in the position of racial minorities with respect to their effective exercise of the electoral franchise. Retrogression is measured by comparing the new districting plan with the old one that existed immediately before adoption of the new plan. Avoiding retrogression generally means states' new district plans must not decrease the percentage of districts in which a minority population is a majority. Such districts are commonly called "majority-minority districts".

Section 2 of the Voting Rights Act prohibits dilution of the collective voting power of minorities and may require the creation of majority-minority districts. The requirement to draw a majority-minority district arises where voting is racially polarized and the minority group is "politically cohesive" and "sufficiently large and geographically compact to constitute a majority in a single member district." Racially polarized voting exists when a racial majority votes sufficiently as a bloc to enable it usually to defeat the minorities' preferred candidate.

While the requirements of Sections 2 and 5 are difficult to meet without race-conscious redistricting, the Equal Protection Clause prohibits racial gerrymandering. A state may not use race as the "predominant factor" in the design of a district, without a compelling governmental interest. Thus far, states have asserted three interests as compelling their race-based redistricting plans. The three are: complying with sections 2 and 5 of the Voting Rights Act and the desire to ameliorate a troubled racial history.

Even with a compelling state interest, a race-based district or plan must be drawn so as to narrowly achieve the compelling governmental interest. The state legislature must remedy the discrimination or achieve compliance with the Voting

Rights Act, but it cannot go too far. For example, a state cannot go beyond what is reasonably necessary to avoid retrogression, and it may not ignore geographic compactness to create a majority-minority district.

Finally, states' redistricting efforts are guided by what has been called "traditional redistricting principles". The seven policies most often cited by the courts as traditional redistricting principles are: (1) compactness, (2) contiguity, (3) preservation of counties and other political subdivisions, (4) preservation of communities of interest, (5) preservation of cores of prior districts, (6) protection of incumbents, and (7) compliance with Section 2 of the Voting Rights Act.

STATUS: *In the House there have been two bills filed that pertain to redistricting.* **H.3003** *is a skeleton bill for the establishment of election districts from which members of House of Representatives will be elected commencing with the 2002 general election; also, the bill repeals the current statute relating to the House of Representatives' election districts. The bill designates the House of Representatives as the submitting authority to make required submission to the United States Department of Justice. The other bill is* **H.3199**, *which requires the House of Representatives to reapportion itself so that a house district must be wholly contained within a county, if the county has sufficient population. Both bills have been referred to the House Judiciary Committee.*

The House Judiciary Committee has scheduled a series of public hearings in June to obtain public input on the redistricting process. Likewise, the Senate Judiciary Committee held a series of public meetings in April to obtain public input on the redistricting process. For additional information on both House and Senate redistricting efforts, visit the South Carolina Statehouse Network on the Internet at http://www.scstatehouse.net, and then click on "Redistricting 2001."

STATE/LOCAL GOVERNMENT

LAW ENFORCEMENT OFFICER RETENTION INCENTIVE PROGRAM

The House approved **H.3718**, which creates the Law Enforcement Officer Retention Incentive Program. This program may be offered by an employer to an active member of the retirement system, other than an elected official, who is eligible for service retirement. Participation in the program occurs upon mutual agreement of the employer and the employee. The bill provides that a program participant retires for purposes of the retirement system, and the participant's normal retirement benefit is calculated on the basis of the member's average final compensation and service credit at the time the program period begins. The participant shall agree to continue employment for a specified period, not to exceed five years. During the

participant's program period, receipt of the participant's normal retirement benefit is deferred and placed in a trust fund on behalf of the participant. The program participant makes no further contributions to the retirement system, accrues no service credit, and is not eligible to receive group life insurance benefits or disability retirement benefits. During the program period, a program participant is not subject to the retirement system earnings limitation for reemployed retirees. Upon termination of employment, the member must receive the balance in the program account either by lump-sum distribution or a tax sheltered rollover into an eligible plan. The bill also includes provisions for a program participant who dies during the program period, and the bill provides that program participants are exempt from the state employee grievance procedure.

STATUS: **H.3718** *passed the House and is pending consideration in the Senate Finance Committee. Provisions of this bill are also included as a Part 1B (temporary) proviso in the 2001-2002 state budget (see above under "Appropriations").*

MINIMUM WAGE STANDARDS OF THE STATE AND ITS POLITICAL SUBDIVISIONS

The House approved, and sent to the Senate **H.3289**. The legislation provides that no political subdivision of this State (including, but not limited to, a municipality, county, school district, special purpose district, or public service district) may establish, mandate, or otherwise require a minimum wage that exceeds the federal minimum wage (as established in the Fair Labor Standards Act of 1938, 29 U.S.C. 206). Also, a political subdivision of this State may not establish, mandate, or otherwise require a minimum wage standard related to employee wages that are exempt under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.). The legislation also applies these restrictions on setting minimum wage standards to State laws. The legislation does not limit the authority of the State or its political subdivisions to establish wage standards in contracts to which they are a party.

STATUS: **H.3289** *passed the House on February 21 and was sent to the Senate where it was referred to the Judiciary Committee. On May 2, the Senate Judiciary Committee gave a favorable report on the bill.*

PORTS AUTHORITY BOARD

The House approved and sent to the Senate **H.3439**. This bill provides that a person may not be appointed to, or continue to serve as a member of, the South Carolina Ports Authority Board who is or becomes a member, associate, representative, or employee of a labor union if the principal activities of the union are ports-related.

STATUS: **H.3439** *passed the House on March 8 and was sent to the Senate where it was referred to the Transportation Committee. On April 4, the Senate Transportation committee reported out the bill majority favorable, minority unfavorable.*

RETIREE MAXIMUM SALARY INCREASE

The House and the Senate have approved differing versions of **S.163**, which increases from twenty-five thousand dollars to fifty thousand dollars the maximum annual amount a retired member of the South Carolina Retirement Systems who is returning to covered employment may earn without affecting the monthly retirement allowance he is receiving from the system. This provision applies to a retiree who has been retired for at least sixty days. The bill provides that if a retiree returns to employment covered by the system sooner than sixty days after retirement, the member's retirement allowance is suspended while the member remains employed by the participating employer.

The House amended the bill to include certain provisions allowing a member of the General Assembly who has twenty-eight years of service- regardless of age (current requirement is thirty years of service)- or twenty-five years of service and at least seventy-one and one-half years of age, to retire and draw a retirement benefit while continuing to serve in the General Assembly. The House returned the bill with these amendments to the Senate. On May 9, the Senate amended the House-passed version of the bill so as to provide that a member of the General Assembly Retirement System may retire if the member is no longer in the service of the State and has either attained the age of sixty years or completed thirty years of credited service (as is currently provided).

STATUS: **S.163** *passed the Senate. The House amended and approved the bill and returned it to the Senate. On May 9, the Senate amended the House's amendments and returned the bill to the House, where concurrence with the Senate amendments is pending.*

TAXATION

DRIVER'S LICENSE SUSPENSION FOR TAX DELINQUENCY

As passed by the House, **H.3117** requires the Department of Public Safety (DPS) to suspend the driver's license and motor vehicle registration of a person who fails to pay personal property tax on a vehicle. The request to suspend must be an electronic notification from the County Treasurer of the county where the tax is delinquent, and the County Treasurer must notify the delinquent taxpayer by letter before the electronic notification is sent to DPS. The bill includes a provision that the county shall allow 30 days for payment of taxes before notifying DPS to suspend the delinquent taxpayer's license and vehicle registration. The bill provides

that a charge of driving under suspension when the suspension is solely for failure to pay property taxes or the reinstatement fee required for the property tax suspension will not require proof of financial responsibility. Penalties are provided for first, second, and third or subsequent charges of driving under suspension when the suspension is solely for failure to pay property taxes or the reinstatement fee required for the property tax suspension. The bill includes a provision that such a charge of driving under suspension must be dismissed if the person provides proof on their court date that the personal property taxes on the vehicle which resulted in the charge being issued have been paid. The bill provides for a fifty dollar fee for reinstatement of a driver's license or vehicle registration suspended due to violation of the provisions of the bill. The bill provides that the revenue from this fine shall be placed by the Comptroller General into a special restricted account and used by DPS to defray expenses of the Department of Motor Vehicles.

The Senate amended the bill by adding a provision that a person shall not be subject to a custodial arrest solely for being under suspension pursuant to the provisions of the bill. The Senate also amended to thirty dollars the fee for reinstatement after a violation of the provisions of the bill. The Senate amended the House's provision for use of the revenue from this fine by providing that DPS may retain these revenues for use in defraying costs associated with suspension and reinstatement action pursuant to the provisions of the bill. The Senate amendments also provide that fees collected in excess of actual departmental costs related to suspension and reinstatement actions pursuant to the bill must be deposited to the general fund of the State at the end of each fiscal year.

STATUS: **H.3117** *was approved by the House, amended and approved by the Senate, and returned to the House. The House non-concurred in the Senate amendments and on May 10 the House ordered that a message of non-concurrence be sent to the Senate.*

FOOD TAX RELIEF

The House approved **H.3442**, which provides for a sales tax exemption on food. This bill provides a sales tax exemption, phased in over four years at an additional one percent reduction per year, on food items eligible for purchase with U.S. Department of Agriculture food coupons. The phase-in would begin July 1, 2001, and would provide a total exemption beginning January 1, 2005. The exemption does not apply to a local sales and use tax imposed pursuant to a referendum held before July 1, 2001, except where a local sales and use tax specifically exempts these items. The exemption provided in the bill applies to a local sales and use tax imposed pursuant to a referendum held after June 30, 2001. The bill also provides that eighty percent of the revenues from sales taxes raised by these special tax rates must be credited to the general fund, and the remainder must be credited to the Education Improvement Act Fund. The legislation provides for an Education Improvement Act "hold harmless" provision. An amount of general fund revenue not derived from the state sales and use tax equal to the amount of state sales and use tax revenue not collected because of the exemption allowed under the bill is

deemed state sales and use tax revenue and must be used as provided in *South Carolina Code of Laws* §59-21-1010(A) and (B), (re disposition and allocation of sales tax revenues for schools) including the appropriate amount required to be credited to the Education Act Improvement Fund.

STATUS: **H.3442** *was approved by the House and is pending consideration in the Senate Finance Committee.*

S.C. HISTORIC REHABILITATION INCENTIVES ACT

The House approved **H.3163**, which provides a state income tax credit for certain expenditures used to rehabilitate certified historic structures located in this State. The bill provides a taxpayer who is allowed a federal income tax credit for such expenditures, a state income tax credit of twenty percent of the expenditures that qualify for the federal credit. The bill provides a taxpayer who is not eligible for such a federal income tax credit and who makes rehabilitation expenses for a certified historic residential structure located in this State, a credit of twenty-five percent of the rehabilitation expenses.

For purposes of these provisions, the bill provides definitions for "qualified rehabilitation expenditures," "certified historic structure," "certified historic residential structure," "certified rehabilitation," and "rehabilitation expenses." The bill provides that "rehabilitation expenses" do not include the cost of acquiring or marketing the property, the cost of new construction beyond the volume of the existing building, the value of an owner's personal labor, or the cost of personal property. The bill provides requirements for claiming the credit and provides that the entire credit may not be taken for the taxable year in which the property is "placed in service" (the taxable year the certified rehabilitation is completed). The credit must be taken in equal installments over a five-year period beginning with the year in which the property is placed in service. The bill provides that any unused portion of any credit installment may be carried forward for the succeeding five years.

The bill includes a provision allowing an "S" corporation, limited liability company (as defined in the bill), or partnership that qualifies for the credit to pass through the credit earned to each shareholder of the "S" corporation, member of the limited liability company, or partner of the partnership. The bill provides that the amount of the credit allowed a shareholder, member, or partner, would be equal to the shareholder's percentage of stock ownership, member's interest in the limited liability company, or the partner's interest in the partnership for the taxable year multiplied by the amount of the credit earned by the entity. The bill requires that a credit earned by an "S" corporation owing corporate level income tax must be used first the entity level, and only the remaining credit passes through to each shareholder.

The bill provides that additional work done by the taxpayer while the credit is being claimed, for a period of up to five years, must be consistent with the Secretary of Interior's Standards for Rehabilitation, and the bill provides for review and

inspection of such additional work with the possibility of forfeiture of the unused portion of the credit if the additional work is not consistent with the Standards for Rehabilitation.

The bill authorizes the Department of Revenue and the Department of Archives and History to promulgate regulations for the administration of the provisions included in the bill.

STATUS: **H.3163** *was approved by the House and is pending consideration in the Senate Finance Committee.*

TRANSPORTATION

COMMERCIAL DRIVERS/SPEED LIMIT VIOLATIONS

The House approved **H.3146**, which provides special penalties for commercial drivers violating speed limits established in zones where the posted maximum speed limit is at least fifty-five miles per hour. The bill provides that an individual who violates speed limits in such zones while driving a commercial vehicle is guilty of a misdemeanor and, upon conviction for a first offense, must be fined as follows: (1) in excess of the posted limit but not in excess of ten miles an hour by a fine of not less than twenty dollars nor more than thirty-five dollars; (2) in excess of ten miles an hour but less than fifteen miles an hour above the posted limit by a fine of not less than thirty-five dollars nor more than seventy-five dollars; (3) not less than fifteen miles an hour but less than twenty miles an hour above the posted limit by a fine of not less than seventy-five dollars nor more than one hundred twenty-five dollars; and (4) not less than twenty miles an hour above the posted limit by a fine of not less than one hundred twenty-five dollars nor more than three hundred dollars or imprisoned for not more than thirty days, and lose his privilege to drive for six months. These penalties are in lieu of any other penalties imposed upon a driver of a commercial motor vehicle exceeding the speed limit in a zone where the maximum speed limit is fifty-five miles an hour. The bill provides that, within sixty days of the signature by the Governor, these penalties and fines must be posted at the zero-mile point where all U. S. highways and interstate highways enter the State and at the intersection of interstate highways within the State. Of amounts credited to the general fund of the state from assessments imposed on these fines, the first fifty thousand dollars must be used to reimburse the Department of Transportation for the signage required by this subsection. Thereafter, the balance of these assessments credited to the general fund of the state must be used for the operations of the transport police.

STATUS: **H.3146** *was approved by the House and is pending consideration in the Senate Judiciary Committee.*

DRIVER'S PERMIT/LICENSE REQUIREMENTS

The House of Representatives approved **H.3933**, which includes revisions to current law regarding beginner's permits, provisional licenses, special restricted driver's licenses, and driver's training. As passed by the House, the bill provides that a beginner's permit is valid in the operation of vehicles between six a.m. and midnight, rather than "during the daylight hours," as is currently provided. The bill provides that a beginner's permit is valid in the operation of certain scooters and cycles between six a.m. and six p.m., except that beginning on the day that daylight savings time goes into effect through the day that daylight saving time ends, the permittee may operate these certain scooters and cycles between six a.m. and eight p.m. The bill provides that a permittee may not operate a motorcycle, motor scooter, or light motor-driven cycle at any other time unless supervised by the permittee's motorcycle licensed parent or guardian. The bill also increases from ninety days to one hundred eighty days the period which a person must hold a beginner's permit before being eligible for full licensure. The bill provides that in addition to current requirements, a driver must complete at least forty hours of driving practice, including at least ten hours of licensed parental- or guardian-supervised driving practice during darkness, in order to be issued a conditional (currently known as "provisional") driver's license or a special restricted driver's license. The holder of conditional driver's license or a special restricted license may not transport more than two passengers who are under twenty-one years of age unless accompanied by a licensed adult who is twenty-one years of age or older. This restriction does not apply when the conditional driver's license holder is transporting family members, or students to or from school. In addition to current requirements, the bill also provides that a person must pass a specified driver's education course in order to be issued a special restricted driver's license. The bill also provides that for purposes of issuing a special restricted driver's license, the Department of Public Safety must accept a certificate of completion for a student who attends or is attending an out-of-state high school and passed a qualified driver's training course or program equivalent to an approved course or program in this State. The bill also provides that a person while operating a motor vehicle under a conditional license or special restricted driver's license (currently this provision relates only to special restricted driver's license holders) who is convicted of a traffic offense (currently this provision applies only to point assessable offenses) or involved in an accident in which he was at fault shall have the removal of the restrictions postponed for twelve months and is not eligible to be issued a regular driver's license until one year from the date of the last traffic offense or accident in which he was at fault or until he is seventeen years of age. Currently, removal of the license holder's restrictions is postponed for six months during which period the licensee must be "free of any traffic convictions."

STATUS: **H.3933** *was approved by the House and is pending consideration in the Senate Transportation Committee.*

SEAT BELTS

As passed by the Senate, S.187 related to the use of a child passenger restraint system in a motor vehicle that transports a child under the age of six years. The bill requires that: a child from birth to twenty pounds and one year of age must be properly secured in a rear facing child safety seat; a child who is between twenty pounds and one year of age to forty pounds and age four must be secured in a forward facing child safety seat; a child up to six years of age who is between forty and eighty pounds must be secured by a belt-positioning booster seat. The belt positioning booster seat must be used with both lap and shoulder belts; a booster seat cannot be used with a lap belt alone. If a child up to the age of six years is over eighty pounds, the child may be restrained in an adult seat belt. If a child under the age of six years can sit with his/her back straight against the vehicle seat back cushion, with knees bent over the vehicle's seat edge without slouching, the child may be moved out of the booster seat into the regular back seat and secured by the adult seat belt.

On May 3, 2001, the House Education and Public Works Committee gave S.187 a favorable report with amendment. The Committee's proposed amendment is a "strike-all" amendment. Therefore, the amendment would become the text of the bill.

Under the House Education and Public Works Committee's proposed amendment to S.187, a child from birth to twenty pounds and one year of age must be properly secured in a rear facing child safety seat; a child who is between twenty pounds and one year of age to forty pounds and age four must be secured in a forward facing child safety seat; a child up to six years of age who is between forty and eighty pounds must be secured by a belt-positioning booster seat. The belt positioning booster seat must be used with both lap and shoulder belts; a booster seat cannot be used with a lap belt alone. If a child up to the age of six years is over eighty pounds, the child may be restrained in an adult seat belt. If a child under the age of six years can sit with his/her back straight against the vehicle seat back cushion, with knees bent over the vehicle's seat edge without slouching, the child may be moved out of the booster seat into the regular back seat and secured by the adult seat belt. Under the House Education and Public Work's Committee's proposed amendment, a child under six years of age may not occupy a front passenger seat of a motor vehicle. However, this restriction does not apply if the motor vehicle does not have rear passenger seats or if all rear passenger seats are occupied by other children under six years of age.

The House Education and Public Works Committee's proposed amendment further provides that the driver is charged with the responsibility of requiring each occupant six years of age up to and under eighteen years of age to wear a safety belt or be secured in a child restraint system.

Current law provides for a ten-dollar fine per seat belt violation and the total fine may not exceed twenty dollars. Under the Education and Public Works Committee's proposed amendment, the fine is increased to twenty-five dollars and

the total fine may not exceed fifty dollars. The proposed amendment also provides that no court costs, assessments, or surcharges may be assessed against the person convicted. The proposed amendment further provides that a seat belt violation must not be included in the offender's motor vehicles records maintained by the Department of Public Safety or in the criminal records maintained by SLED.

The House Education and Public Works Committee's proposed amendment provides that an officer may not stop a driver in absence of another motor vehicle violation except: (1) when the stop is made in conjunction with a driver's license or registration check, or (2) when a driver or occupant under eighteen is not wearing a safety belt or is not secured in a child restraint. The proposed amendment provides that probable cause for a violation must be based on a law enforcement officer's clear and unobstructed view of a person under the age of eighteen not restrained as required by this legislation. The proposed amendment further provides that no vehicle, driver, or occupant may be searched solely as a result of a seat belt violation.

STATUS: **S.187** *passed the Senate and received a favorable report with amendment from the House Education and Public Works on May 3, 2001. The bill is on the House contested calendar pending second reading.*

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LEGISLATIVE UPDATE

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